



## Challenging the Child Tax Credit

### 1. Introduction

- 1.1 This paper is submitted on the 10<sup>th</sup> October 2002 by the Child Poverty Action Group Inc. (CPAG) to the Human Rights Commission as a complaint against the Child Tax Credit, Section KD 2(4) and OB 1 of the Income Tax Act 1994.
- 1.2 The complaint is that the Child Tax Credit (CTC) is an unlawfully discriminatory piece of legislation under Sections 21 and 65 of the Human Rights Act 1993. CPAG also argues that the CTC breaches New Zealand's obligations under the United Nations Convention on the Rights of the Child (UNCORC).
- 1.3 CPAG encourages the Human Rights Commission to further investigate the Child Tax Credit with a view of making a ruling on its legality.

### 2. The Child Tax Credit

- 2.1 The CTC is part of the Family Assistance package that the government makes available to low-income families. However the CTC (unlike other forms of Family Assistance) is ONLY available to the people who are "independent" of the state. Families who receive state assistance in the form of a benefit or pension are not entitled to receive the credit. [See Section KD 2(4) and Section OB 1 of the Income Tax Act 1994].
- 2.2 Families are entitled to receive the CTC if:
  - 2.2.1 the family income does not include an income tested benefit (domestic purposes, widow's transitional retirement, invalid's, independent youth, emergency, community wage), veteran's pension, NZ Super, a student allowance, or ACC (for longer than three months), and
  - 2.2.2 If the total family income is under a specified amount eg. the Child Tax Credit of \$15/week per child along with the Family Support Tax Credit (another part of the Family Assistance package) is available in full for families earning less than \$20,000/year. The total maximum amount payable per child per year through the Child Tax Credit is \$780. By the time family income for a one-child family is \$33,546, all family assistance has reduced to zero.
- 2.3 Family Support is paid to ALL low-income families, regardless of the source of their income. However, the level of Family Support is inadequate, and its

purchasing power has not kept up with rises in inflation, especially for children under 13. In 1996, the introduction of the CTC, together with a small increase in Family Support, helped bring Family Assistance in line with the cost of living, but only for those families that qualified for the CTC. Those families without the CTC, have had a serious fall in the purchasing power of their child payments, contributing to the rise in child poverty in New Zealand.

- 2.4 Family Support payments vary according to the age and number of children, and parental income. For example, a family of two parents with children under thirteen earning a combined total income of under \$20,000 receives the maximum of \$47 per week for the first child and \$32 for each subsequent child. Since 1988, the maximum Family Support payment for children under thirteen has increased only \$5 per child. To compensate for inflation, the first child should now be getting \$72 per week. With the Child Tax Credit of \$15 per week per child, maximum total family assistance for the first child is now \$62 per week. Thus the introduction of the CTC provided some inflation catch-up, but only for the families that qualified, leaving those who did not, denied significant compensation for inflation.

### **3. The legislative intent behind the CTC**

- 3.1 The CTC is the current name of what was originally called the Independent Family Tax Credit. It was introduced by the National-led coalition Government in 1996 as part of a range of policies called Family Plus. These are tax credits available to low-income families who meet the criteria of being independent from the state.
- 3.2 The CTC was introduced in the Tax Reduction and Social Policy Bill which dealt with a number of policy changes, including income tax cuts, surcharge increases for super-annuitants, work testing, and abatement levels for benefits.
- 3.3 The Finance and Expenditure Select Committee heard submissions on the bill. Several groups expressed the opinion that the ineligibility of beneficiaries to access the CTC was discriminatory, and increased the gap between those receiving state assistance, and those not. They argued that it was turning beneficiaries into second-class citizens, and was particularly harsh on those people who COULD not work due to injury, and were denied this form of assistance. Officials maintained that there was other assistance available to beneficiaries, and that this credit was intended to increase the rewards for those in paid employment. The select committee accepted this view.
- 3.4 In explaining its reasons for supporting the CTC being available only to working low-income families, the select committee said that the CTC was being introduced to address two equity issues:

*The first is the tax burden placed on low-income families and middle-income families with children. As Government spending expanded from 25% of GDP in the early 1970's to more than 40% in the late 1980's, an increasing burden was placed on taxpayers. Those developments bore heavily on low-income people and middle-income people working full-time and bringing up families.*

*The skill, initiative, and commitment of low-income working people and middle-income working people play a critical role in the long-term economic and social progress of the nation. Easing the tax burden on them and their families is among the Government's highest priority uses for the Budget surplus.*

*The second problem is the way the tax benefit system often discourages beneficiary families who would prefer to become independent. Many of those people have found, for many years now, that full-time work offers very little more than a benefit, once they have covered the costs of working. In some cases, families may be financially worse off by working, and could improve their situation by leaving their job and going on to a benefit.*

*The system has, therefore, encouraged dependency and tended to lock people into it. Research findings support the view that long spells of benefit dependency have bad effects. A growing Budget surplus now permits the Government to take remedial action. (Commentary on Tax Reduction and Social Policy Bill as reported from the Finance and Expenditure Committee, 1996, Brookers)*

- 3.5 It appears from these statements that the CTC, despite its name, was not being aimed towards the children of low-income families at all. In fact, the well-being of children, and the benefits for them through this credit are not even addressed in this commentary. The CTC is focused entirely around easing a tax burden, or increasing the rewards for those in low-wage, paid employment. While creating work incentives is not a problem in itself, it is damaging and inefficient to use a **child-based** credit for this purpose
- 3.6 The seemingly obvious intention of a benefit so named would be for it to improve the well-being of the children of low-income families. It seems an unfortunate policy practice to use children's benefits as the incentive to encourage people on benefits into paid work.
- 3.7 The CTC therefore denies children of beneficiaries their rights under Article 26 of the UNCORC— the right to benefit from Social Security - because of discrimination against them based on their parents' status (Article 2) (discussed further below).
- 3.8 During the debate in the house over this bill, Opposition Members (then the Labour Party) distanced themselves from the CTC, calling it “unfair” and “obscene” (Hon. Dr Michael Cullen), and “mean-spirited” (Hon. Phil Goff). Annette King commented: -

[Invalids and sickness beneficiaries] are excluded from the family tax credit. An estimated 150,000 families will be in when it comes to tax credits and 200,000 families will be out. Why are they out? It is because they are not working in paid employment. They are working, all right! People at home caring for children are working as other people work, but there is no recognition of this in this Bill. They are penalised. Who is penalised? Their children are penalised. Why? It is because their parents do not work in paid employment. . . . This Bill penalises beneficiaries. It is very clear that the Government will not help these people, because it believes that they are not worthy of help. We are talking of sick people, invalided people, and older people. The Government believes that by denying them such assistance these families will be encouraged to go into paid work.

(Hansard debates, Second Reading – 29 Feb 1996 Tax Reduction and Social Policy Bill).

- 3.9 At that time Labour Members of Parliament pledged that such a discriminatory law would not continue under a Labour Government. Unfortunately, there have been no clear statements that reflect an intent to abandon this discriminatory practice. While there have been promises to review the Family Assistance package, no explicit mention has been made of the Child Tax Credit.
- 3.10 It seems that neither the select committee nor the Government of the time seriously considered the damaging effect that such a piece of legislation would have on families receiving benefits, especially the 300,000 children of beneficiaries. This is in direct contravention of New Zealand's obligations under the UNCORC, Article 3, which require the best interests of the child to be a primary consideration in all actions concerning children. (discussed below)

#### **4. Problems with the CTC**

- 4.1 The CTC blatantly discriminates against families who receive their income, or even part of their income, from a benefit rather than all of it from paid work. Even where one parent is in full-time work, if the other is on a pension or benefit or ACC long term, the family is discriminated against. The source of their low-income is deemed to be more important than the fact that the income itself is low, and they are punished through their ineligibility for the extra \$15/week (\$780 a year) from the CTC.
- 4.2 This Act penalises such families, already existing on low-incomes, and stigmatises them further as “less worthy” than those in paid employment. More importantly, it directly impacts on the children of those families, who are already in a vulnerable position.
- 4.3 The impact of ineligibility for the CTC is particularly concerning for those families supported by ACC, or on invalid's benefits who CAN NOT work, yet their families and children are punished through no fault of their own. The CTC cannot act as an “incentive” or “encouragement” for these families to move towards paid employment- by reason of their disability they are deemed, by the state, unable to work. There is no logical explanation of why their children should suffer as a result of their employment status.
- 4.4 The impact on children is considerable. The evidence from food bank usage suggests an extra \$15 per child per week is a significant increase for a family who survives on under \$20,000 a year (\$385/week). Children are totally dependent on parents and caregivers, and changing their situation is out of their control. It is well documented that their early development and education can be detrimentally affected by a lack of resources and support.
- 4.5 If government policy wishes to encourage beneficiaries into paid employment, then it should make an extra hour of work pay. It is simply not acceptable to tie work-incentive policies to the welfare of children. New Zealand children should not

suffer, or be discriminated against, because of poorly-designed Government labour market tools.

## **5. The Human Rights Act 1993**

- 5.1 The Human Rights Act 1993 (HRA) sets forth the different grounds under which discrimination is deemed to be unlawful. These grounds include employment status, family status, and indirect discrimination.
- 5.2 On 31 December 2001, an amendment to the HRA came into effect which made the government, its agencies and anyone who performs a public function, accountable for any unlawful discrimination under the HRA (Part 1A). It applies to all policies and procedures that were in place on 1 January 2002.
- 5.3 This means that any act or omission by the Government or anyone else performing a public function that is inconsistent with the right to freedom from discrimination, is to be tested against the standard set out in s. 5 of the Bill of Rights Act 1990. This means that acts or omissions complained about must be shown to be a reasonable limit on the right to be free from discrimination, prescribed by law, which is demonstrably justified in a free and democratic society. If the Government cannot show this, then the act or omission is unlawful discrimination.
- 5.4 It is therefore possible to challenge the legitimacy of the CTC because it unlawfully discriminates against both beneficiaries and their children on grounds covered in the HRA. Child Poverty Action Group believes the CTC does not constitute a reasonable limit on the right to be free from discrimination.

## **6. Laying a complaint to the Human Rights Commission**

- 6.1 The Human Rights Commission is empowered under the Human Rights Act to protect human rights in general accordance with United Nations Covenants and Conventions and has a range of functions and powers in order to do this. It is the office that receives complaints under Part IA of the Human Rights Act.
- 6.2 This complaint against the CTC is based on three possible grounds under the HRA. The first is that the CTC unlawfully discriminates against many low-income parents because of their *employment status*. The second is that the CTC discriminates against the children of beneficiaries either because of their *family status* - their relationship to their parents. The third is that children of beneficiaries suffer from *indirect discrimination* as a result of the CTC.
- 6.3 This complaint also includes arguments that the CTC breaches obligations that New Zealand has ratified under the UNCORC.

## **7. The CTC unlawfully discriminates against many low income parents– *employment status***

7.1 Section 21 of the HRA states:-

*21. Prohibited grounds of discrimination---*

*(1) For the purposes of this Act, the prohibited grounds of discrimination are-*

*(k) Employment status, which means---*

*(i) Being unemployed; or*

*(ii) Being a recipient of a benefit or compensation under the Social Security Act 1964 or the Accident Rehabilitation and Compensation Insurance Act 1992:*

7.2 The Act protects people from unlawful discrimination in the provision of all goods and services (Section 44). It seems clear that many low income parents are being discriminated against in not being able to access the CTC solely because one parent is a recipient of a benefit or ACC compensation. This is unlawful discrimination.

## **8. The CTC unlawfully discriminates against children - *family status***

8.1 Section 21 of the HRA states:-

*21. Prohibited grounds of discrimination---*

*(1) For the purposes of this Act, the prohibited grounds of discrimination are-*

*(l) Family status, which means---*

*(i) Having the responsibility for part-time care or full-time care of children or other dependants; or*

*(ii) Having no responsibility for the care of children or other dependants; or*

*(iii) Being married to, or being in a relationship in the nature of a marriage with, a particular person; or*

*(iv) Being a relative of a particular person:*

8.2 Using this section, it is argued that the children of beneficiaries are being discriminated against because they are relatives of beneficiaries - Section 21 (1)(l)(iv). If they were not related to those beneficiaries, i.e if they were the children of low-income, waged parents, then they would be entitled to benefit from the CTC. Because of their relationship with their parents, they are denied that right. This is unlawful discrimination.

## **9 The CTC unlawfully discriminates against children - *indirect discrimination***

9.1 Section 65 of the HRA is concerned with indirect discrimination. It states: -

*65. Indirect discrimination---Where any conduct, practice, requirement, or condition that is not apparently in contravention of any provision of this Part of this Act has the effect of treating a person or group of persons differently on one of the prohibited grounds of discrimination in a situation where such treatment would be unlawful under any provision of this Part of this Act other than this section, that conduct, practice, condition, or requirement shall be unlawful under that provision unless the person whose conduct or practice is in issue, or who imposes the condition or requirement, establishes good reason for it.*

- 9.2 Under this section, it is argued that the children of beneficiaries are a group of persons indirectly affected by the CTC only being granted to families of waged parents. Because of their family status in relation to their parents, the indirect discrimination they suffer is unlawful and unjustifiable.
- 9.3 This argument also links in with New Zealand's obligations under the UNCORC (see below) where it is required that in all actions involving children taken by public agencies, children's best interests remain a primary consideration. According to the debate and the select committee reports on the passing of this piece of legislation, children were barely considered, and certainly not as a primary consideration.
- 9.4 If child based credits are to be used as an incentive for their parents to move from benefits to paid work (which CAPG believes is an problematic policy), then the impact on their lives **MUST** be considered. The children of beneficiaries are indirectly, unlawfully discriminated against because of the employment status of their parents.

## **10 The United Nations Convention on the Rights of the Child (UNCORC)**

- 10.1 The UNCORC was ratified by New Zealand in 1993. The Convention offers a vision of the child as an individual *and* as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. It also recognises the need for special care and attention to be paid to children, and the vulnerabilities that children face.
- 10.2 Although the Convention itself does not provide remedies or a process for challenging the CTC, it does add weight to this complaint to the Human Rights Commission. There are a number of Articles in the Convention which strengthen the complaint, and highlight the New Zealand Government's breaches of their international obligations to children.
- 10.3 **Article 2** of the Convention states

*1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

*2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

10.4 This is a clear statement that a child should not suffer or be discriminated against because of the status of their parents or caregivers. Rights guaranteed to children under the Convention include rights to health, education, social security and a standard of living (**Articles 24, 26, 27, 28 and 29**). The lack of eligibility for the CTC means that the children of beneficiaries' access to such services could be compromised solely because of the status of their caregiver. This is unacceptable.

10.5 **Article 3** of the Convention states:-

*1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

10.6 This is a compelling argument which strengthens this complaint against the CTC. It seems illogical that this legislation was passed, named a CHILD Tax Credit, yet the interests of the very children concerned seemed not to figure in the minds of the legislators at all. The interests of children, and particularly the interests of the children of beneficiaries, was certainly not a primary consideration when this legislation was passed, and because it was an action concerning children, the omission of consideration was a clear breach of our Convention obligations.

10.7 This Article should also serve as a reminder to the Government about their duty to ensure that the best interests of the child remain at the centre of any and all legislation that impacts on the child.

10.8 **Article 4** of the Convention states: -

*States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation*

10.9 This Article also strengthens the argument about the obligation of the Government to look at the resources available to ensure that children's rights are as fully protected and ensured as possible. There is little doubt that resources exist to extend the CTC to ALL low-income families, and thereby increase the likelihood of the implementation of the rights recognized in the Convention for all children.

10.10 **Article 18** of the Convention states: -

*2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing*

*responsibilities and shall ensure the development of institutions, facilities and services for the care of children.*

- 10.11 This article imposes a duty on the government to render assistance to parents and caregivers to assist the development of the child. It is argued that this assistance should be available to ALL children of low-income families, not only those who are the children of waged parents. Again, it strengthens the argument that the CTC is an unlawfully discriminatory policy that breaches New Zealand's obligations under the Convention.

## **11 Conclusion and Remedies**

- 11.1 The Child Poverty Action Group argues that the Child Tax Credit unlawfully discriminates against beneficiaries and the children of low income parents where there is benefit income, and is therefore inconsistent with the Human Rights Act 1993. The Child Tax Credit also breaches several obligations under the United Nations Convention on the Rights of the Child that New Zealand has signed and ratified.
- 11.2 CPAG urges the HRC to fully investigate this complaint and for the Human Rights Review Tribunal to declare the CTC inconsistent with the Human Rights Act, and recommend appropriate action for the Government to take to rectify the situation.
- 11.3 CPAG suggests that the CTC should be extended to ALL low-income families with children. It also suggests the CTC be back dated and paid from 1 January 2002 to those families previously excluded.